IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 1037 of 2002

Between:

The Adilabad District Co-op. Central Bank Limited, Rep. by its General Manager, Shri A. Linganna, S/o. Narasimulu, Central Office at Adilabad-504001, Andhra Pradesh.

PETITIONER

AND

1 Government of Andhra Pradesh, Rep. by its Transaction and Legal Advisor, Implementation Secretariat, Public Enterprises Department, "B" Block, 3rd Floor, A.P. Secretariat, Hyderabad-500 022.
2 The Director, Handlooms and Textiles, A.P. Hyderabad.
3 The Secretary, Industries and Commerce Department, Government of Andhra Pradesh, A.P. Secretariat, Saifabad, Hyderabad-500 022.
4 The Adilabad Cotton Growers Spinning Mills Limited, Adilabad, Andhra Pradesh.
5 Industrial Development Bank of India Ltd., rep. by its Dy. General Manager 5-9-89/1&2 Chapel Road, PB No. 370, Hyderabad
R5 is impleaded as per court order dt. 8-4-2005 in WPMP 9928 of 2005.

RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or orders more particularly one in the nature of Writ of Mandamus declaring the action of the respondents No.1 to 3 in putting the Adilabad Cotton Growers Spinning Mills Limited, Adilabad, on sale under notification published in Hindu dt. 27.8.2000 after prohibiting the petitioner from proceeding against the assets to recover its dues of Rs. 5,45,08,424.00 plus interest thereon and without taking any decision to transfer the sale proceeds to the petitioner bank as arbitrary, illegal and violative of fundamental rights guaranteed to the petitioner bank under article 14, 19(1)(g) and 300(A) of Constitution of India and direct the respondents No.1 to 3 to deposit the entire sale proceeds realized from the mill of the petitioner

bank towards partial or full discharge of the liability of the respondent No.4 as per the recovery certificate issued in case No.2/94-95 dated 3.1.1995.

Counsel for the Petitioner : MR.DEEPAK BHATTACHARJEE

Counsel for the Respondents : GP FOR INDUSTRIES & COMMERCE

Counsel for the respondent No.5 : MR. S.NIRANJAN REDDY

The Court made the following :

ORDER:

The writ petitioner is the Adilabad District co-operative Central Bank, Limited Central Bank Limited, Adilabad represented by its General Manager, Shri A.Linganna with a prayer to issue an order more particularly one in the nature of writ of mandamus directing the respondents to release the entire sale proceedings.

The case of the writ petitioner as set out in the affidavit filed in support of the writ petition be summarized in brief is as follows:

The Adilabad Cotton Growers Spinning Mills Limited, Adilabad-4th respondent availed working capital limit from the petitioner-bank in the year, 1991. The 4th respondent stopped repayment of the loan from the year 1993-94. The petitioner-Bank initiated appropriate proceedings under section 71 of A.P. Co-operative Societies Act, in Case No. 1/95-96 and thereby the petitioner-bank entitled to recover a total sum of Rs.1,51,39,790/- with interest at the rate of 24% p.a., from 01-04-1994 till realization as per the award passed after adjudication. The execution petition was also filed to recover the award amount. While so, the Industries and Commerce Department-3rd respondent issued prohibitory order prohibiting the Sale Officer from taking any further action under the Industrial Employment (Standing Orders, 1946). The action of the respondents in preventing the petitioner-bank from proceeding against the assets of the 3rd respondent including the hypothecated goods infringed amounts to infringement of rights of the petitioner-bank guaranteed under article 14, 19(i) (g) and article 300 (A) of the Constitution of India. Hence, the

writ petition seeking relief as stated supra.

Mr. M.Balaji representing on behalf of the Advocate General appearing on behalf of the respondents 1 to 3 submits that the issue in this writ petition is squarely covered by the Division Bench Judgment in W.P.No.1979 of 2002. A similar direction was sought for in W.P.No.1979 of 2002 by M/s Sri Susheel Cotton Corporation and others and on elaborate discussion of the rights of the parties therein, the Division Bench observed as follows:

> "We have already noticed the nature of relief granted by this Court to the writ petitioners. The petitioners right to participate in the enquiry before the sale proceeds are distributed is not taken away by the impugned legislation. The impugned legislation in no manner overrules the judgment which attained finality in between the parties. The sweep of legislation is not confined to the petitioners alone but uniformly applies to all creditors concerning the entire subject sought to be covered under the impugned legislation. The petitioners right to realize the amounts from out of the sale proceeds is in no manner taken away by the impugned legislation. The judgment in no manner declared the rights of the petitioners for realization of their money out of the sale proceeds in preference to the claim of the secured creditors. The impugned legislation, as a measure of legislative policy lays down priorities in distribution of the sale proceeds in which the expenses incurred for preservation and protection of the assets is placed on the top priority followed by dues payable to the secured creditors according to their rights and priorities inter se; dues payable to provident fund or other authorities which are protected under a statute by a charge on the assets. Even the share capital contributed by the Members of the Society is placed below the priorities referred to hereinabove. The object underlying the impugned provision is to provide rationale basis for distribution of the proceeds realized from the transfer of assets of the society concerned and its application in discharge of the liabilities. That by no stretch of imagination, the prioritization could be attacked as an irrational law. The impugned provision merely indicates the prioritization and in no manner deprives or puts an embargo on the rights of the petitioners to realize the amounts payable to them. It is nobody's case that the petitioners would not be paid their money from out of the proceeds realized from the sale of assets of the society even if the amounts are available for discharge of the liabilities of the society in order of priority."

This factual aspect has not been controverted by the learned counsel appearing for the petitioners. In view of the settled proposition of law in the above referred case, the prayer of the writ petitioners to direct the respondents 1 to 3 to release the entire sale proceeds in its favour cannot be considered.

In the result, the writ petition is devoid of merits and hence, it is hereby dismissed. No costs.

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(B.SESHASAYANA REDDY, J)

18th July, 2005.

Dvs

Copies to:

1. The General Manager, The Adilabad District Co-op. Central Bank Limited, Central Office at Adilabad-504001, Andhra Pradesh.

2.The Transaction and Legal Advisor, Government of Andhra Pradesh, Implementation Secretariat, Public Enterprises Department, "B" Block, 3rd Floor, A.P. Secretariat, Hyderabad-500 022.

3. The Director, Handlooms and Textiles, A.P. Hyderabad.

4. The Secretary, Industries and Commerce Department, Government of Andhra Pradesh, A.P. Secretariat, Saifabad, Hyderabad-500 022.

5. The Adilabad Cotton Growers Spinning Mills Limited, Adilabad, Andhra Pradesh.

6. The Dy. General Manager, Industrial Development Bank of India Ltd., 5-9-89/1&2 Chapel Road, PB No. 370, Hyderabad.

7. Two CCs to the Government Pleader for Industries and Commerce, High Court Buildings, Hyderabad.

8. Two CCs to the Advocate General, High Court of A.P., Hyderabad.

9. Two CD copies.

HONOURABLE SRI JUSTICE B. SESHASAYANA REDDY

WRIT PETITON No.1037 OF 2002

18th July, 2005